IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979
NO. 78-1141

STEELCASE, INC.,
Petitioner,

v.

DELWOOD FURNITURE COMPANY, INC.,
Respondent.

PETITIONER'S REPLY TO MEMORANDUM OPPOSING CERTIORARI

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INTRODUCTION

Respondent's memorandum attempts to obfuscate the error of the Fifth Circuit by refering to a single sentence used by the District Court in it's opinion, rather than to that which the District Court actually considered in rendering its opinion. The Fifth Circuit affirmed the District Court's error and in so doing, committed error as a matter of law in its own right.

No matter what the District Court said in the sentence taken out of context by Respondent, the fact is, as stated by the Fifth Circuit, the District Court did not base its holding on what was claimed in the Belgian patent as required by the Law but rather based its holding of obviousness on the availability of the "teachings of the Belgian patent as well as it's explicit claims" to a person skilled in the art. When one looks to the claimed invention of the Belgian patent, combined with what it teaches in light of other prior art at the time the '499 patented invention was made, one cannot help but conclude that the '499 patent is valid.

This was carefully pointed out to the Fifth Circuit by Petitioner on appeal. Statements by the Fifth Circuit Court of Appeals reveal that it realized that the District Court, in order to reach its decision, had to look beyond the claims of the Belgian patent to the teachings of the Belgian patent as a whole. In recognizing that the District Court could not possibly have looked solely to the claimed invention of the Belgian patent in combination with other prior art for invalidating the patent, the Fifth Circuit went to great lengths to justify the use of the Belgian patent not only for what it claimed but for what it disclosed in the description when it stated as follows:

> The state of the art does not depend on the provincial view that the available knowledge is only that published in one locality or contained only in domestic patents. The prior art is all of that knowledge that would have been available to any person having ordinary skill in the art. This hypothetical person of ordinary skill is not deemed to be omniscient, but he must be assumed to share the knowledge available in his art (to persons of ordinary skill) wherever it may originate. In finding that the teachings of the Belgian patent as well as its explicit claims should have been available to a person of ordinary skill in the art, the trial court was not clearly in error. (A 73)

It is apparent that the Fifth Circuit realized the District Court had looked to the teachings of the Belgian patent as a whole and the Fifth Circuit erroneously held that the District Court was correct in doing so. Ergo, the Fifth Circuit errored as a matter of law. (See cases pp. 7 and 8, "Petition For Writ Of Certiorari")

THE NATURE OF THE DISTRICT COURT ERROR

In the District Court trial on the Belgian patent, Respondent-Defendant presented no evidence whatsoever as to what is patented by the Belgian patent. Both Defendant's witnesses admitted that they had no idea of what was patented in the Belgian patent (Testimony of Vincent M. Foote at A103 and Testimony of Joseph H. Appleton at A115). Their entire testimony related to complicated conjectures as to the structural characteristics of the chair as shown in the drawings of the Belgian patent. There is no mention or hint of these conjectures in either the written disclosure or the claims of the Belgian patent. To the extent that the District Court opinion was based on the testimony of these men, the District Court committed error as a matter of law since this testimony is not based on the claimed invention of the Belgian patent.

Belgian patent attorney Daniel Grissar testified that the claimed invention of Belgian patent 724,771 is that of a process and resulting chair in which two spaced plastic shells are pushed one over the other, fastened to one another, with the unit so obtained being fastened to a foot. (Testimony of Daniel Grissar, A95.) The only testimony as to what one would learn from that claimed concept in light of the prior art at the time the '499 patented invention was made was provided by an expert in the use of plastics in furniture, George Pickering. Pickering testified that the only interpretation one could give to the structure resulting from this patented process in light of the teachings of other prior art such as the patent to Hawley is that it would result in a unitized composite shell in which both shells were load bearing and structural in function. (Pickering testimony, A99, as well as Pickering testimony at Fifth Circuit Appendix 269a, not presented in the Petition Appendix.

Thus the only testimony at the Court's disposal which was based on the claimed invention of the Belgian patent and the teachings of the prior art at the time the '499 patented invention was made could only support a conclusion that the

'499 patent is valid. In order to reach a contrary conclusion, the District Court had to look to the teachings of the Belgian patent as a whole, and specifically to that which Foote and Appleton testified they were able to glean from the drawings of the Belgian patent.

THE FIFTH CIRCUIT RECOGNIZED THAT THE DISTRICT COURT LOOKED BEYOND THE CLAIMS OF THE BELGIAN PATENT, BUT AFFIRMED ANYWAY AND THEREBY COMMITTED ERROR AS A MATTER OF LAW

The Fifth Circuit Court of Appeals obviously recognized that Plaintiff-Petitioner was correct in asserting that the District Court had actually based its opinion on teachings which Appleton and Foote testified they were able to glean from the drawings of the Belgian patents. However, the Fifth Circuit Court of Appeals saw nothing wrong with the District Court having done so. The Fifth Circuit felt that:

> "This hypothetical person of ordinary skill is not deemed to be omniscient, but he must be assumed to share the knowledge available in his art (persons of ordinary skill) wherever it may originate." (A73)

The Fifth Circuit thus found no error by the District Court in referring to the teachings of the Belgian patent, as well as to it's explicit claims. (A73)

In refering to only one line taken out of context from the Fifth Circuit's opinion, Respondent chooses to ignore the obvious errors in the actual statements of conclusion reached by the Fifth Circuit Court of Appeals. Simply because a court uses the right words in one sentence of an opinion does not alleviate the gross error of law in the substance of that opinion as a whole and in the numerous other statements made. The specific sentence to the effect that one can look to that which can be inferred from the claims of a foreign patent as well as that explicitly presented is a correct statement. However, when the Court goes on to refer to

Petitioner-Plaintiff's argument as a "provincial view", and goes on to state that the prior art is "all of that knowledge that would have been available to any person having ordinary skill in the art," and goes on to say that the Court is entitled to look to the teachings of the Belgian patent as well as to it's explicit claims, the Fifth Circuit Court of Appeals has committed an error of law which goes to the very heart of it's affirming opinion.

CONCLUSION

It is apparent by reference to the evidence presented to the District Court that the District Court based it's opinion on that which Defendant's witnesses were able to glean from the drawings of the Belgian patent. If the Court had looked solely to the teachings of the claims of the Belgian patent in light of other prior art at the time the invention was made, the Court could not possibly have concluded that the '499 patent was invalid.

The Fifth Circuit recognized this, but found no error in the District Court looking to the teachings of the Belgian patent rather than solely to what might be learned from the claimed invention. The Fifth Circuit Court of Appeals thereby committed error as a matter of law. Notwithstanding isolated sentences taken out of context by Respondent in its memorandum, a grievous error of law has been committed in this case which creates confusion between the Circuits and with respect to prior Supreme Court opinions. One more cloud is created which will further discourage the lagging invention and technology of the United States of America and further discourage inventors from sharing their knowledge through the medium of United States patents.

This error must be reviewed and reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing "Petitioner's Reply To Memorandum Opposing Certiorari" was served on Respondent by mailing three (3) copies of same to Respondent's Counsel of Record, Garrett R. Tucker, Jr., Baker and Botts, 3000 One Shell Plaza, Houston, Texas 77002 by depositing same in the United States Post Office with first class air mail postage prepaid on this 15th day of March, 1979.

LLOYD A. HENEVELD